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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

EDDIE TURNER,

Defendant and Appellant.

B272452

(Los Angeles County
Super. Ct. No. BA424226)

APPEAL from a judgment of the Superior Court of Los Angeles County, Michael Garcia, Judge. Affirmed.

Mark McBride for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

Eddie Turner appeals from a judgment entered after a jury found him guilty of four counts of grand theft, five counts of procuring and offering a false or forged instrument, and one count of perjury by declaration. The jury found true enhancement allegations regarding the dollar amount Turner took and a special allegation regarding the date law enforcement discovered the offenses. The trial court sentenced him to eight years, eight months in prison.

Turner contends eight of the 10 counts in the information are barred by the four-year statute of limitations. He also challenges the sufficiency of the evidence supporting the convictions and argues the prosecutor committed misconduct during examination of Turner and in closing argument. Finding no error and substantial evidence supporting the convictions, we affirm the judgment.

BACKGROUND

This criminal action was filed in 2014. At trial, the prosecution accused Turner of providing false employment and financial information to obtain real estate loans in 2005 and refinance loans in 2007. Turner contended his real estate broker, Allen Shay, filled out the 2005 loan applications for him and, without his knowledge, provided the false employment and financial information. He also contended Shay obtained two refinance loans in his name in 2007 without his knowledge or permission.

I. Prosecution Case

A. The 2005 real estate loans

In January 2005, Turner applied for a loan from Countrywide Home Loans (Countrywide) to purchase a residential property in Altadena, California. Jeffrey Gleason,

who testified at trial, was the home loan consultant at Countrywide who originated Turner's loan, gathered the documentation necessary to process the loan, and forwarded the documentation to Countrywide's loan processors.

According to Gleason's testimony, and as indicated on the loan application admitted into evidence at trial, on January 18, 2005, Gleason conducted a telephone interview with Turner to obtain the personal, employment, and financial information included on the loan application. During the interview, Turner told Gleason he was employed as a senior computer consultant, earning \$20,700 per month (gross salary plus bonus). Turner also provided information about his bank accounts, including a representation that he had a checking account at Washington Mutual with a balance of \$164,050.79. Gleason testified that Turner signed the loan application.

On January 18, 2005, the date of the telephone interview, Countrywide sent Turner a form letter, requesting additional information supporting his loan application, including his two most recent bank statements and a letter explaining the variation between the employment information listed on the loan application and the employment information listed on his credit report.

As admitted into evidence at trial, the loan file includes two statements, faxed from Shay's office, indicating Turner's Washington Mutual checking account had a balance of \$164,050.79 on December 2, 2004 and a balance of \$164,183.56 on January 3, 2005.¹ The file also includes a January 24, 2005 letter

¹ An employee of JPMorgan Chase, the bank that acquired Washington Mutual's assets, testified at trial that these

from Turner, stating he had been employed since June 2001 at a company called Computer Consulting and was then a Senior Financial Consultant. Turner's letter also explained the reasons he had listed various addresses for residential and business purposes.

Relying on Turner's representations regarding his employment and finances, and believing them to be true, Countrywide funded the loan in the amount of \$896,000, and Turner purchased the property in Altadena. In January 2005, Turner signed the deed of trust, which was notarized and recorded. The notary public who notarized the deed of trust, testified at trial that in addition to signing the deed of trust, Turner signed her notary journal and made a thumbprint impression in the journal.

In August 2005, Turner applied for a home equity line of credit (HELOC) from Countrywide on the Altadena property. Rebecca Woodall, who testified at trial, was the personal loan consultant at Countrywide who conducted a telephone interview with Turner to obtain the personal, employment, and financial information included on the loan application. The signed application stated he was employed as a computer consultant, listed the address of his employer, and provided a business telephone number that was the same as Turner's home telephone number.

Julie Oleias, who testified at trial, was the loan processor at Countrywide who contacted Turner at the home/business phone number listed on the HELOC application to confirm the

purported bank statements were fake. On November 15, 2004 and December 14, 2004, Turner's Washington Mutual checking account had a balance of \$101.

information provided in the application and to request a pay stub. The loan file includes an August 2005 pay stub for Turner from a company called “Computer Consulting Operations Specialist” with the same address as the employer listed on the application.²

Relying on Turner’s representations regarding his employment and finances, and believing them to be true, Countrywide funded the HELOC loan in the amount of \$250,000. In August 2005, Turner signed the deed of trust, which was notarized and recorded. The notary public who notarized the deed of trust, testified at trial that in addition to signing the deed of trust, Turner signed her notary journal and made a thumbprint impression in the journal.

B. The 2007 refinance loans

Turner was making interest-only monthly payments of \$3,098.03 on the 2005 home purchase loan. On October 31, 2006, Countrywide mailed Turner a “Significant Payment Increase Alert,” notifying him that his minimum monthly payment would increase to \$8,238.84 if the principal balance reached 115 percent of the original loan amount. At the time, the principal balance was 105.52 percent of the original amount.

Turner continued making interest-only payments. On February 18, 2007, Countrywide mailed Turner another notice, informing him that his principal balance was 106.77 percent of the original loan amount, and his minimum monthly payment could increase to \$8,327.76 if his principal balance reached 115

² A former employee of Computer Consulting Operations Specialist testified at trial that Turner never worked for the company and the pay stub in his HELOC loan file at Countrywide was fake.

percent of the original amount. Both notices invited Turner to “[e]xplore refinancing options” by contacting Countrywide at a telephone number provided.

Turner refinanced his home purchase loan. On February 20, 2007, Gleason conducted a telephone interview with Turner to obtain the personal, employment, and financial information included on the two refinance loan applications. Turner applied for a \$1 million first mortgage and a \$218,000 second mortgage on the Altadena property. Both applications include a borrower’s signature.

During the telephone interview, Turner told Gleason he was a vice president at “Computer Consulting Operations,” with a gross monthly income of \$20,833.33.³ He also provided information about his bank accounts, including a savings account at Farmers Insurance Group with a balance of \$250,047.33. The loan file includes two statements, indicating Turner’s Farmers Insurance Group Federal Credit Union savings account had a balance in excess of \$250,000 in January and February 2007.⁴

Relying on Turner’s representations regarding his employment and finances, and believing them to be true, Countrywide funded the first mortgage for \$1 million and the second mortgage for \$218,000. On March 23, 2007, Turner signed the deeds of trust for these loans, and the deeds were

³ As set forth above, Turner was never employed at Computer Consulting Operations Specialist.

⁴ An employee of Farmers Credit Union testified at trial that these purported bank statements were fake. Turner’s Farmers Credit Union savings account had a balance of \$5.01 in January 2007 and \$5.02 in February 2007.

notarized. Marlene Stewart, the notary public who notarized the deeds of trusts, testified at trial that she checked Turner's driver's license to verify his identity and Turner made a thumbprint impression in her notary journal at the time he signed the deeds of trust.

After escrow closed, the deeds of trust on the two refinance loans were recorded. Also recorded were documents demonstrating that the 2005 purchase loan and the 2005 HELOC loan were fully repaid.⁵ All of these recorded documents were mailed to Turner at the Altadena property address where he lived. In June 2007, a refund check from the escrow company made payable to Turner in the amount of \$1,616.52 was deposited into Turner's bank account.

Until December 2007, Turner made payments on the 2007 refinance loans using the online and telephone payment options, which both required him to enter the specific loan account number to make a payment. Then he stopped making payments, and the Altadena property went into foreclosure.

C. The 2009 bankruptcy petition

In May 2009, Turner filed a bankruptcy petition. Therein, he listed the amount of the secured claim on the Altadena property as \$1,231,000. He also listed the account numbers for the March 2007 refinance loans, and stated the amounts owed as \$1,014,000 and \$217,000.

⁵ Shay, Turner's real estate broker, used his own line of credit to obtain a cashier's check in the amount of \$29,916.43 to pay off the remaining balance on the 2005 loans to close the 2007 refinance loans.

D. Turner's 2012 report of identity theft/forgery to law enforcement

In March 2012, Turner reported to the Los Angeles County Sheriff's Department that he was a victim of identity theft or forgery. He told a deputy he learned about the 2007 refinance loans in December 2011 when he attempted to modify his home loan on the Altadena property (after he was discharged from bankruptcy). He denied participating in the 2007 refinance.

E. Turner's 2012 civil lawsuit alleging fraudulent refinancing loans

In April 2012, Turner filed a verified complaint against Countrywide, Bank of America (which acquired Countrywide), Gleason, (the home loan consultant), Stewart (the notary public for the 2007 refinance loans), and other parties, alleging he did not participate in obtaining the 2007 loans, and the notarization for these loans was fraudulent. He asserted the defendants' fraudulent actions resulted in the foreclosure of the Altadena property. Turner did not name Shay, his real estate broker, as a defendant.

F. Turner's interview with detectives

On August 6, 2012, Detective Christopher Derry and his partner, who were part of the sheriff's department's real estate fraud team, interviewed Turner at the Altadena property. A recording of the interview was played for the jury. Derry testified at trial.

During the interview, Turner confirmed he signed the verification attached to his April 2012 complaint against Countrywide, Bank of America, Gleason, Stewart, and other defendants. He denied signing the deeds of trust on the 2007 refinance loans, and stated he never received any telephone calls

from Countrywide regarding these loans. He confirmed his telephone number was listed correctly on the 2007 refinance loan applications (as were his Social Security number and date of birth).

Turner also told the detectives he had never met Stewart or appeared before her to have a document notarized. He acted surprised when they told him they had verified the thumbprint in Stewart's notary journal for the 2007 refinance matched his thumbprint. Turner stated Shay "must be involved somehow." He also stated he had been "duped." He acknowledged the driver's license number listed in Stewart's notary journal was his.

Turner posited he might have mistakenly signed documents related to the 2007 refinance loans, believing he was signing documents related to a Long Beach property he was selling around the same time. Although he had earlier denied meeting Stewart, he told the detectives Stewart was the escrow officer for the Long Beach property sale.⁶ He also stated he did not notice he made payments on the 2007 refinance loans because the lender on the 2005 loans was the same and the payments were automatically deducted from his bank account. He explained he stopped making payments on the Altadena property when he "fell behind" and could no longer afford it.

The day after the interview, Turner sent an email to the detectives. As summarized by Detective Derry at trial, Turner indicated in the email that he believed "he had somehow been

⁶ Stewart testified at trial that, as reflected in her files, the escrow on the Long Beach property transaction was canceled. No deed was signed and no documents were notarized regarding the Long Beach property. Thus, Turner's thumbprint in her notary journal could only have related to the 2007 refinance loans.

tricked into putting his thumbprint into Marlene Stewart's journal by thinking that he was there to sign something related to the sale of the Brenner property in Long Beach instead of the 2007 refinance loans on his property on Altadena Drive."

II. Defense Case

Turner testified in his defense. He stated that although he wanted to obtain the 2005 loans, it was Shay, his real estate broker, who filled out the loan applications and provided Countrywide with the false employment and financial information for the loans. He denied knowing about the false information, including the bank statements and the January 24, 2005 letter clarifying his employment information. He also denied participating in any telephone calls with Countrywide employees regarding these loans. He did not recall if he signed the 2005 loan applications.

Turner stated he had no reason to refinance his loans in 2007 and did not participate in the refinance. He denied having knowledge of the refinance loans at the time he filed his bankruptcy petition in May 2009, although he correctly listed the account numbers of the 2007 loans on his petition. He stated he copied the account numbers from his credit report.

Turner testified he did not learn about the 2007 refinance loans until he attempted to modify his home loan in 2011. Thereafter, he reported the fraudulent loans to the sheriff's department and filed the civil fraud action.

III. Prosecution Rebuttal

A forensic document examiner with the sheriff's department compared Turner's signature on the bankruptcy petition and checks he wrote with the signature on the identity

affidavit for the \$1 million refinance loan and opined “it was probably the same person” who signed these documents.

Shay did not testify at trial. During deliberations, the jury submitted a written request, stating: “Why is Alan [*sic*] Shay not present as a witness or to defend himself? Having his testimony can add to our evidence.”⁷

IV. Verdicts and Sentencing

The jury found Turner guilty of four counts of grand theft under Penal Code section 487, subdivision (a)⁸ (count 1 related to the 2005 home purchase loan, count 3 related to the 2005 HELOC loan, and counts 5 & 7 related to the 2007 refinance loans); five counts of procuring and offering a false or forged instrument under section 115, subdivision (a) (count 2 related to the deed of trust for the 2005 home purchase loan, count 4 related to the deed of trust for the 2005 HELOC loan, counts 6 & 8 related to the deeds of trust for the 2007 refinance loans, and count 10 related to the 2012 verified complaint), and one count of perjury by declaration under section 118, subdivision (a) (count 9 related to the 2012 verified complaint). On counts 1-8, the jury found true the special allegation that the offenses were not discovered until July 27, 2012, within the meaning of section 803, subdivision (c). The jury also found true the enhancement allegations that Turner took property of a value exceeding \$150,000, within the meaning of section 12022.6, subdivision (a)(2) (counts 1, 3, 5, 7), took property of a value exceeding \$1 million, within the meaning of section 12022.6, subdivision (a)(3)

⁷ The trial court’s response to the jury’s request is not at issue on appeal.

⁸ Further statutory references are to the Penal Code.

(counts 1, 3, 5, 7), and engaged in a pattern of related felony conduct involving the taking of more than \$500,000, within the meaning of section 186.11, subdivision (a)(2) (counts 1-10).

The trial court sentenced Turner to eight years, eight months in prison: on count 1, the middle term of two years for the grand theft, plus two years for taking property of a value exceeding \$150,000, and three years because the offenses were related felonies involving the taking of more than \$500,000; and on count 5, eight months for the grand theft (one-third the middle term), plus one year for taking property of a value exceeding \$1 million (one-third the middle term).⁹

DISCUSSION

I. Statute of Limitations

Turner contends counts 1 through 8 (for grand theft and procuring and offering a false or forged instrument) are barred by the four-year statute of limitations set forth in section 801.5, and the trial court erred in denying his section 1118.1 motion to dismiss made on this ground.¹⁰ As set forth above, the jury found true the special allegation that the offenses alleged in counts 1-8 were not discovered until July 27, 2012. This criminal action was filed in 2014.

⁹ The trial court stayed the sentence on counts 2, 4, 6, 7, 8, and 10, and imposed concurrent terms on counts 3 and 9.

¹⁰ In his appellate briefing, Turner argues the entire action is barred by the four-year statute of limitations. He does not tailor his argument to any individual count. Clearly, counts 9 and 10, related to the filing of the verified complaint in April 2012—about two and a half years before the Information was filed—are not barred by the four-year statute of limitations, which Turner agrees applies to this action.

A prosecution for grand theft or any felony offense in which fraud is a material element “shall be commenced within four years after discovery of the commission of the offense, or within four years after the completion of the offense, whichever is later.” (§§ 803, subd. (c) & 801.5.) This limitations and tolling provision applies to the crime of procuring or offering a false or forged instrument under section 115. (*People v. Soni* (2005) 134 Cal.App.4th 1510, 1518-1519.)

An “offense is discovered when either the victim or law enforcement learns of facts which, when investigated with reasonable diligence, would make the person aware a crime had occurred.” (*People v. Bell* (1996) 45 Cal.App.4th 1030, 1061.) “The crucial determination is whether law enforcement authorities or the victim had actual notice of circumstances sufficient to make them suspicious of fraud thereby leading them to make inquiries which might have revealed the fraud.” (*People v. Zamora* (1976) 18 Cal.3d 538, 571-572, italics omitted.)

The prosecution has the burden of proving by a preponderance of the evidence that a “criminal action was commenced within the applicable limitations period.” (*People v. Castillo* (2008) 168 Cal.App.4th 364, 369.) “When an issue involving the statute of limitations has been tried, we review the record to determine whether substantial evidence supports the findings of the trier of fact.” (*Ibid.*) Similarly, we review a trial court’s denial of a section 1118.1 motion to dismiss under the substantial evidence standard applicable to review of evidence supporting a conviction, considering the sufficiency of the evidence at the time the motion was made. (*People v. Houston* (2012) 54 Cal.4th 1186, 1215.)

“ ‘In reviewing a challenge to the sufficiency of the evidence, we do not determine the facts ourselves. Rather, we “examine the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence—evidence that is reasonable, credible and of solid value. . . .” [Citations.] We presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence. [Citation.] [¶] . . . “[I]f the circumstances reasonably justify the jury’s findings, the judgment may not be reversed simply because the circumstances might also reasonably be reconciled with a contrary finding.” [Citation.] We do not reweigh evidence or reevaluate a witness’s credibility.’ ” (*People v. Houston, supra*, 54 Cal.4th at p. 1215.)

Substantial evidence supports the trial court’s denial of Turner’s section 1118.1 motion to dismiss and the jury’s finding that the prosecution brought counts 1-8 within the four-year limitations period. As explained below, based on the evidence presented at trial, it was reasonable for the jury to find neither Countrywide nor law enforcement had actual notice of circumstances sufficient to make them suspicious of Turner’s fraud prior to the time Detective Derry began investigating the matter in July 2012.

Turner argues Gleason (the home loan consultant on the 2005 home purchase loan and the 2007 refinance loans) and Stewart (the notary public for the 2007 refinance) should have taken “steps to verify” his employment. Viewing the evidence in a light most favorable to the judgment, as we must, we reject this argument.

Gleason testified he conducted telephone interviews with Turner to gather employment and financial information for the

2005 home purchase loan and the 2007 refinance loans. Rebecca Woodall, a loan consultant, and Julie Oleias, a loan processor, contacted Turner by telephone to gather employment and financial information for the 2005 HELOC loan. They telephoned Turner at the number listed on his loan applications, which he confirmed to detectives was in fact his telephone number. During her call to Turner, Oleias requested a pay stub, which she later received. Turner cites no authority indicating Countrywide was precluded from relying on his representations and the documents submitted in support of his loan applications regarding his employment and finances.

Substantial evidence supports the trial court's and jury's determinations Countrywide and law enforcement discovered Turner's fraud within the four years before this criminal action was commenced. It was reasonable for the jury to conclude that Countrywide reasonably believed the employment and financial information Turner provided was true and correct until law enforcement notified it otherwise in 2012.

II. Sufficiency of Evidence Supporting Convictions

Turner challenges the sufficiency of the evidence supporting all 10 convictions in this action.

A. Grand theft

Under section 487, a defendant commits grand theft when he takes money, labor, or real or personal property of a value exceeding \$950. To prove grand theft in this case, the prosecution had to show “(1) that the defendant made a false pretense or representation, (2) that the representation was made with intent to defraud the owner of his property, and (3) that the owner was in fact defrauded in that he parted with his property

in reliance upon the representation.’ ” (*People v. Whight* (1995) 36 Cal.App.4th 1143, 1151.)

Turner argues the evidence does not show he made a false pretense or representation to Countrywide. In support of this argument, he asks this court to credit his testimony that it was Shay, and Shay alone, who made the false representations regarding his employment and finances without his knowledge or permission. He further asks us to ignore the evidence discussed above that loan consultants spoke with Turner on the telephone, and he personally provided them with false employment and financial information. We may not ignore evidence favorable to the judgment or make credibility determinations.

Substantial evidence also supports the second element of the crime—that Turner made the false representations with the intent to defraud Countrywide. A reasonable inference from the evidence is that Turner knew he would not qualify for the loans if he did not lie about his salary and bank account balances, so he submitted false information to gain access to funds.

Finally, substantial evidence demonstrates Countrywide funded the loans because it believed Turner’s false representations about his employment and finances were true. Countrywide’s employees testified Countrywide would not have approved the loans if they believed the information Turner provided was false.

B. Procuring and offering a false or forged instrument

Under section 115, subdivision (a), “Every person who knowingly procures or offers any false or forged instrument to be filed, registered, or recorded in any public office within this state, which instrument, if genuine, might be filed, registered, or

recorded under any law of this state or of the United States, is guilty of a felony.”

In support of his argument that he did not procure or offer a deed of trust based on false information in connection with the 2005 or 2007 loans, Turner again relies on his theory of the case that Shay made the false representations without his knowledge or permission. Turner ignores the evidence favorable to the judgment that he personally made false representations.¹¹

In his appellate briefing, although Turner argues all his convictions must be reversed, he omits any discussion of count 10 related to his filing of a verified complaint alleging he did not participate in obtaining the 2007 refinance loans and did not know about them until December 2011. Substantial evidence demonstrates his verified complaint was false—he participated in a telephone interview with a Countrywide loan consultant for purposes of filling out the applications, his thumbprint appears in the notary’s journal entry for the transaction, he made payments on the 2007 refinance loans using the specific account numbers, and he listed the account numbers and balances of the 2007 refinance loans on his 2009 bankruptcy petition.

C. Perjury

Turner was convicted of perjury based on the verification attached to the 2012 complaint, in which he declared under penalty of perjury that the information in the complaint was true. Substantial evidence demonstrates Turner knew the allegations

¹¹ Substantial evidence demonstrates Turner appeared before a notary when he signed each deed of trust, including those for the 2007 refinance loans he denied participating in.

in the complaint were false at the time he signed the verification, as set forth in the preceding paragraph of this opinion.

III. Prosecutorial Misconduct Claim

Turner contends the prosecutor committed misconduct by referencing a “stripper pole” in Turner’s backyard and by “blatantly implying” his 2012 civil action was dismissed because his “story was false.”

A. Testimony and argument regarding the pole

Defense counsel elicited the first reference to the “stripper pole” during his cross-examination of Detective Derry. When defense counsel asked Derry the specific location where he and his partner interviewed Turner at the Altadena property in August 2012, Derry responded: “There was like a -- there was like a raised patio area with a stripper pole and TV, and we were out there next to the stripper pole.” Defense counsel did not object or move to strike the answer.

Defense counsel also elicited the second reference to the pole. On direct examination of Turner, defense counsel asked if he felt “offended when Detective Derry talked about [him] having a stripper pole at [his] home.” Turner responded, “That’s a whole new occasion, but yes.”

The prosecutor engaged in the following exchange with Turner during cross-examination, without objection from defense counsel:

“[Prosecutor:] Now, sir, when you were interviewed by Detective Derry out at your house, you mentioned that it bothered you when you heard him testify that you had a stripper pole. [¶] Do you recall that?

“[Turner:] I thought it was a low blow.

“[Prosecutor:] I’m sorry?

“[Turner:] I thought it was a low blow and unnecessary.

“[Prosecutor:] Did you have a stripper pole?

“[Turner:] It was a table with a pole. No strippers. I never had a stripper.

“[Prosecutor:] You never had a stripper on the pole, but it was a pole –

“[Turner:] For entertainment purposes.”

In rebuttal argument, during a discussion about Turner’s interview with the detectives, the prosecutor argued: “Perhaps he was insulted about the stripper pole where they had the interview. You know what? It doesn’t matter whether he has it or not. The only reason why he felt insulted was because you guys found out. But we’re not here to convict him because of that. We’re here because of all the lies that he gave and stealing everything that doesn’t belong to him.” Defense counsel did not object.

B. Testimony regarding Turner’s 2012 civil lawsuit

During cross-examination, the prosecutor engaged in the following exchange with Turner regarding the 2012 civil lawsuit, without objection from defense counsel:

“[Prosecutor:] By the way, sir, that lawsuit isn’t pending right now, is it?

“[Turner:] No, it’s not.

“[Prosecutor:] As a matter of fact, that lawsuit was dismissed, was it not?

“[Turner:] It was never -- it was never judged on its merit.

“[Prosecutor:] I didn’t ask you that, sir. I asked you if that lawsuit was dismissed, was it not?

“[Turner:] Well, I don’t know -- I don’t know the court word for it, but it wasn’t judged on the merits. It was a statute of limitations problem. I refiled the lawsuit again.

“[Prosecutor:] The lawsuit is currently not pending, is it, sir?

“[Turner:] There is a lawsuit pending right now.

“[Prosecutor:] This lawsuit is not pending, is it?

“[Turner:] It was dismissed because of the statute of limitations.

“[Prosecutor:] So the short answer is it’s not pending?

“[Turner:] Because the statute of limitations.”

C. Forfeiture

The Attorney General argues Turner forfeited his claim of prosecutorial misconduct by failing to object below. “ ‘As a general rule a defendant may not complain on appeal of prosecutorial misconduct unless in a timely fashion—and on the same ground—the defendant made an assignment of misconduct and requested that the jury be admonished to disregard the impropriety.’ ” (*People v. Valencia* (2008) 43 Cal.4th 268, 281.)

Turner did not respond to this forfeiture argument.¹²

We agree with the Attorney General’s argument. A timely objection by defense counsel and an admonition by the trial court would have cured any alleged harm of which Turner now complains.

Even if Turner preserved the claim for review, there was no error. To prevail on his claim of prosecutorial misconduct, Turner must show the prosecutor used “ ‘deceptive or reprehensible methods to persuade the jury.’ ” (*People v.*

¹² He did not file a reply brief on appeal.

Williams (2013) 56 Cal.4th 630, 671.) “ ‘When a claim of misconduct is based on the prosecutor’s comments before the jury, ‘ “the question is whether there is a reasonable likelihood that the jury construed or applied any of the complained-of remarks in an objectionable fashion.” ’ ” (*Ibid.*)

Defense counsel elicited the first two references to the “stripper pole.” During cross-examination, the prosecutor asked follow-up questions and elicited testimony lessening any prejudicial impact—that no stripper ever used the pole. In rebuttal argument, the prosecutor told the jury “we’re not here to convict him because of that [the pole].” The record does not indicate the prosecutor attempted to use the pole to persuade the jury to convict Turner of the charged offenses.

Nor does the record indicate the prosecutor attempted to convince the jury the civil lawsuit was dismissed because it was false, as Turner argues. The prosecutor merely asked Turner if the lawsuit was still pending and if it was dismissed. Turner volunteered that it was dismissed on statute of limitations grounds. There is no reason to believe the jury construed this testimony in a manner prejudicial to Turner.

DISPOSITION

The judgment is affirmed.

NOT TO BE PUBLISHED.

CHANNEY, Acting P. J.

We concur:

BENDIX, J.

WEINGART, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.